

DOROTHY L. STANDRIDGE ET AL.

IBLA 80-594, 80-623  
80-624, 80-625

Decided June 3, 1981

Appeals from decisions of the Nevada State Office, Bureau of Land Management, rejecting applications for Indian allotments. N-26965, N-26966, N-26971, N-26972, and N-27698.

Affirmed.

1. Act of Feb. 8, 1887 -- Classification and Multiple Use Act of 1964 -- Indian Allotments on Public Domain: Lands Subject to -- Public Records -- Segregation

Publication in the Federal Register of a classification for multiple use management pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 (1976), will segregate the affected land to the extent indicated in the notice, and applications for such land pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), must be rejected.

2. Act of Feb. 8, 1887 -- Indian Allotments on Public Domain: Lands Subject to -- Patents of Public Lands: Effect

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed pursuant to sec. 4 of the Act of

Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), for such lands, is properly rejected.

APPEARANCES: Dorothy L. Standridge, Grady M. Baxter, Johnny M. Baxter, and Mackey V. Kelly II, pro sese.

#### OPINION BY ADMINISTRATIVE JUDGE HARRIS

Dorothy L. Standridge, Grady M. Baxter, Johnny M. Baxter and Mackey V. Kelly II, have appealed from various decisions of the Nevada State Office, Bureau of Land Management (BLM), dated January 23 and 25, 1980, and April 8, 1980, rejecting their applications for Indian allotments on public lands in Clark County, Nevada, N-26965, N-26966, N-26971, N-26972, and N-27698, pursuant to section 4 of the Act of February 8, 1887, as amended (General Allotment Act), 25 U.S.C. § 334 (1976). 1/ The rationale for the decisions was that the land was not available for appropriation under the agricultural land laws, including the General Allotment Act, *supra*, either because the land was classified for retention in Federal ownership (applications N-26965, N-26966, N-26971, and N-26972), or because it had been transferred out of Federal ownership (application N-27698).

In their statements of reasons for appeal, appellants uniformly contend that any surveyed or unsurveyed lands of the United States, not otherwise appropriated, can be allotted for the benefit of Indians. They argue that the law applicable to classification does not entail appropriation and, in any case, "can not supersede the allotment claims of Indians." They cite 43 CFR 2212, 2/ Choate v. Trapp, "224 U.S. 413 (1912)" 3/ and the Fifth Amendment to the United States Constitution.

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1/ Dorothy L. Standridge filed application N-26965 for the SW 1/4 sec. 23, T. 20 S., R. 64 E., Mount Diablo meridian, Nevada, and application N-26966 on behalf of her minor son, Bruce D. Standridge, for the NW 1/4 sec. 23, T. 20 S., R. 64 E., Mount Diablo meridian, Nevada on Nov. 6, 1979. Grady M. Baxter filed application N-26971 for the SW 1/4 sec. 27, T. 20 S., R. 64 E., Mount Diablo meridian, Nevada, on Nov. 6, 1979. Johnny M. Baxter filed application N-26972 for the SE 1/4 sec. 22, T. 20 S., R. 64 E., Mount Diablo meridian, Nevada, on Nov. 6, 1979. Mackey V. Kelly II filed application N-27698 for the NE 1/4 sec. 29, T. 20 S., R. 59 E., Mount Diablo meridian, Nevada, on Dec. 14, 1979. The application in the latter case was originally filed for the NE 1/4 sec. 29, T. 29 S., R. 59 E., Mount Diablo meridian. However, BLM stated in its Apr. 8, 1980, decision that T. 29 S., R. 59 E. does not exist in the State of Nevada.

2/ 43 CFR Subpart 2212 deals with miscellaneous state exchanges.

3/ We note that the Indian allotment case at 224 U.S. 413 (1912) is Heckman v. United States; Choate v. Trapp appears at 224 U.S. 665.

We shall first consider the appeals from BLM's decisions rejecting the four applications because the requested lands lie within an area that has been classified for retention in Federal ownership. Before proceeding further, we note that these lands have been the subject of various actions affecting their suitability for allotment pursuant to section 4 of the General Allotment Act, supra. Item 10 of the application form states: "Public land withdrawn by Executive Orders 6910 \* \* \* of November 26, 1934, \* \* \* is not subject to settlement under section 4 of the General Allotment Act of February 8, 1887, as amended until classified as suitable."

Exec. Order No. 6910 (Nov. 26, 1934) ordered, subject to valid existing rights, that

[a]ll of the vacant, unreserved and unappropriated public land in the \* \* \* [State of] Nevada \* \* \* be, and it hereby is, temporarily withdrawn from settlement, location, sale, or entry and reserved for classification, and pending determination of the most useful purpose to which such land may be put in consideration of the provisions of the Act of June 28, 1934 [as amended (Taylor Grazing Act), 43 U.S.C. § 315 (1976)] \* \* \* and for conservation and development of natural resources.

Furthermore, on November 3, 1936, all public land in Clark County, Nevada, was placed in Nevada Grazing District No. 5 pursuant to the Taylor Grazing Act, supra. 1 FR 1748 (Nov. 7, 1936).

The applicable regulation, 43 CFR 2530.0-3(c), provides that public land withdrawn by Exec. Order No. 6910 and public land within a grazing district established under the Taylor Grazing Act, supra, are not subject to settlement under section 4 of the General Allotment Act, supra, until such settlement has been authorized by classification.

Finally, all of the public lands described in the four applications were classified for multiple use management, and the nature of the classification was published at 34 FR 14084 (Sept. 5, 1969). The notice states in relevant part:

Pursuant to the Act of September 19, 1964, \* \* \* [(Classification and Multiple Use Act of 1964), 43 U.S.C. § 1411 (1976)] \* \* \* and to the regulations in 43 CFR Parts 2410 and 2411, the public lands within the area described below are hereby classified for multiple-use management. Publication of this notice has the effect of segregating the described lands from appropriation only under the agricultural land laws (43 U.S.C. Pts. 7 and 9; 25 U.S.C. sec. 334) \* \* \* and the lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws \* \* \*. As used herein,

"public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for Federal use or purpose.

[1] Section 4 of the General Allotment Act, supra, authorizes the Secretary of the Interior to issue allotments to Indians, in certain instances, where the Indians have made settlement upon public lands "not otherwise appropriated." Pamela June Wood Finch, 49 IBLA 325 (1980); Thurman Banks, 22 IBLA 205 (1975). In the present case, the lands were "appropriated."

Publication in the Federal Register of a notice of classification pursuant to the Classification and Multiple Use Act of 1964, supra, and the regulations in 43 CFR Part 2410 (1969) (now 43 CFR Group 2400), will segregate the affected land to the extent indicated in the notice. Wanda Lois Lee McKinney, 53 IBLA 279 (1981); Samuel Lee Gifford, 53 IBLA 23 (1981); Robert Dale Marston, 51 IBLA 115 (1980); United States v. Rodgers, 32 IBLA 77 (1977). The notice published September 5, 1969, segregated the lands described from appropriation under the agricultural land laws, including section 4 of the General Allotment Act, supra.

Accordingly, BLM properly rejected the four applications which identified land classified for multiple use management. There is no violation of the rights of Indians where an allotment application is rejected because the land is not classified as suitable for allotment. Finch v. United States, 387 F.2d 13 (10th Cir. 1967), cert. denied, 390 U.S. 1012 (1968); see also Pallin v. United States, 496 F.2d 27 (9th Cir. 1974); Hopkins v. United States, 414 F.2d 464 (9th Cir. 1969).

There is no information or credible evidence to show that any of the three applicants had physically settled upon the lands applied for, and particularly, that any alleged settlement was initiated prior to the time the lands were no longer available for entry. Appellants have no rights predating either the order of withdrawal, the designation of the grazing district, or the notice of classification.

Finally, we must consider the appeal from the BLM decision rejecting application N-27698 because the requested land had been transferred out of Federal ownership. The applicant land situated in the NE 1/4 sec. 29, T. 20 S., R. 59 E., Mount Diablo meridian, Nevada. The record indicates that various lands, including the requested land, were patented to the Husite Company by patent No. 1133536, dated December 28, 1951, and patent No. 1137526, dated January 27, 1953.

[2] In case in which Federal officers have acted within the scope of their authority, a patent for land, once issued, passes beyond the control of the executive branch of the Government. United States v. State of Washington, 233 F.2d 811 (9th Cir. 1956). The effect of the issuance of a land patent is to transfer the legal title from the United States. Samuel Lee Gifford, *supra*; Robert Dale Marston, *supra*; State of Alaska, 35 IBLA 140 (1978); Basille Johnson, 21 IBLA 54 (1975). The Department has held that where BLM's records show that lands have been patented, the United States does not have title to them, and an Indian allotment application for such lands is properly rejected. Samuel Lee Gifford, *supra*; Maudra June Underwood Lentell, 49 IBLA 317 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Bruce R. Harris  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

